

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY COKER : CIVIL ACTION NO. 97-2794  
 :  
 v. : (CRIMINAL NO. 91-321-05)  
 :  
 UNITED STATES OF AMERICA :

MEMORANDUM ORDER

Presently before the court is petitioner's petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, which the government opposes.

Petitioner was indicted with nineteen others for conspiring to distribute cocaine as part of a large scale, multi-state, multi-million dollar drug distribution enterprise directed by co-defendant Julian Claude Dumas, Jr. from Los Angeles. Petitioner was convicted after a jury trial on January 27, 1992 of conspiracy to distribute and possession with intent to distribute substantial quantities of cocaine. Because of prior felony drug convictions, he was a career offender. With a total offense level of 35 and a criminal history of VI, petitioner faced 292 to 365 months of imprisonment.

Petitioner was sentenced on October 14, 1992 to 292 months of imprisonment, to be followed by five years of supervised release. The court later reduced that sentence to 240 months pursuant to Fed. R. Crim. P. 35(b).

Petitioner asserts two grounds for relief.

First, petitioner sought a reduced sentence based on his anticipation of the Supreme Court ruling in United States v. LaBonte, 117 S. Ct. 1673 (1997). While petitioner does not specify the potential ground for relief, the court assumes that he believes he may qualify for a reduction in sentence pursuant to retroactive amendments to the Sentencing Guidelines, specifically, U.S.S.G. App. C, amnd. 506 (Nov. 1994)(amending § 4B1.1 comment., n.2), as this was the same contention made by the defendants in LaBonte.

The amendment at issue revised the applicable commentary to preclude the consideration of statutory sentence enhancements in determining the "maximum term authorized" for purposes of the career offender statute. The Supreme Court, however, determined that the amendment was inconsistent with the plain language of the career offender statute and was thus invalid. LaBonte, 117 S. Ct. at 1679. LaBonte clearly does not provide petitioner with grounds for a reduction in sentence.

Petitioner also contends that his counsel was ineffective in not arguing for a lower criminal history category. A § 2255 petition is the appropriate vehicle for asserting such a claim. See United States v. Gaydos, 108 F.3d 505, 512 n.5 (3d Cir. 1997); United States v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994).

Effective assistance of counsel means adequate representation by an attorney of reasonable competence. Government of the Virgin Islands v. Zepp, 748 F.2d 125, 131 (3d

Cir. 1984). To show ineffective assistance of counsel, it must appear that a defendant was prejudiced by the performance of counsel which was deficient and unreasonable under prevailing professional standards. Strickland v. Washington, 466 U.S. 668, 686-88 (1984); Government of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir.1989). Counsel's conduct must have so undermined the proper functioning of the adversarial process that the result of the pertinent proceedings cannot be accepted as reliable, fair and just. Lockhart v. Fretwell, 506 U.S. 364, 369 (1993); Strickland, 466 U.S. at 686; U.S. v. Nino, 878 F.2d 101, 103 (3d Cir.1989).

Petitioner maintains that "one of his past convictions greatly overstated his criminal history." He points to a 1987 New Jersey conviction for possession with intent to distribute a controlled substance. Petitioner argues that because the amount of drugs was "very small," it "did not warrant using such conviction as a partial basis for treating [him] as a career offender." Petitioner argues that his counsel's failure to object to the use of this conviction in determining his criminal history category was ineffective.

The New Jersey charge followed petitioner's arrest while in possession of \$900 worth of illegal drugs and \$939 in cash. Petitioner argues that the quantity of drugs was sufficiently small that it could have been for personal use.

One, of course, may at a given time possess a large amount of drugs for use or a small quantity for sale. The



correct sentence and the government's response thereto, **IT IS**  
**HEREBY ORDERED** that the petition is **DENIED** and the above action  
is **DISMISSED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**